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Attorneys for Defendant,  
MIRA MESA MARKETPLACE EAST, LLC

**UNITED STATES DISTRICT COURT**  
**SOUTHERN DISTRICT OF CALIFORNIA**

OUTERBRIDGE ACCESS )  
ASSOCIATION, SUING ON BEHALF )  
OF DIANE CROSS; and DIANE CROSS, )  
An Individual, )

Plaintiffs, )

vs. )

ROSS DRESS FOR LESS, INC. d.b.a. )  
ROSS DRESS FOR LESS #478; MANNA )  
DEVELOPMENT GROUP, LLC. D.b.a. )  
PANERA BREAD #4279; MIRA MESA )  
MARKETPLACE EAST, LLC and DOES )  
1 THROUGH 10, Inclusive, )

Defendants. )

Case No.: 08 CV 0045 BTM CAB

**NOTICE OF MOTION AND  
MOTION TO DISMISS BY  
DEFENDANT MIRA MESA  
MARKETPLACE EAST, LLC.**

[FRCP §§ 12(b)(1); 28 U.S.C. 1367(c)]

Complaint Filed: January 8, 2008

Judge: Hon. Barry T. Moskowitz

Courtroom: 15

Date: April 11, 2008

Time: 11:00 a.m.

**NO ORAL ARGUMENT UNLESS  
REQUESTED BY COURT**

TO PLAINTIFFS AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on April 11, 2008 in Courtroom 15 of the above entitled court, located at 940 Front Street, San Diego, California, Defendant MIRA MESA MARKETPLACE EAST, LLC., (hereinafter referred to as "Defendant") responds to the Complaint of Plaintiffs OUTERBRIDGE ACCESS ASSOCIATION, Suing on Behalf of DIANE

1 CROSS, (hereinafter referred to as "Plaintiffs") by moving under Federal Rules of Civil  
2 Procedure §12(b)(1) for the Court to dismiss all state law causes of action of Plaintiffs' complaint  
3 for all of the reasons set forth in 28 USC §1367(c), especially in light of the conflict in California  
4 state law surrounding the California Unruh Act and Civil Code §52(a) after decision rendered in  
5 *Gunther v. Lin* 144 Cal. App. 4th 223 (2006).

6 This Motion is based on this Notice of Motion, the Memorandum of Points and  
7 Authorities in Support thereof, Defendant's Request of Judicial Notice, the Court's file  
8 and on all other matters presented by counsel.

9 Dated: February 12, 2008

MILBERG & DE PHILLIPS

10 /s/ Timothy G McNulty

11 By:

12 Timothy G. McNulty  
13 Attorneys for Defendant, MIRA MESA  
14 MARKETPLACE EAST, LLC  
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